

FIELD INVESTIGATION REPORT

Permit No.: NWK-2021-00572

Date: 26 July 2021 & 27 September 2021

Violator: Stan Jost

Address: 3821 SW 48th St., Newton, KS 67114

Telephone Number: 316-772-6806

Email: unknown

Project Location: In the north segment of Mud Creek in the S ½ of the SW ¼ of Section 36, Township 23 South, Range 1 West as well as the NW ¼ of the NW ¼ of Section 1, Township 24 South, Range 1 West, all in Harvey County, Kansas (Lat: 37.99894°, Lon: -97.38684°).
In the south segment of Mud Creek in the W ½ of the NW ¼ of Section 12, Township 24 South, Range 1 West, Harvey County, Kansas (Lat: 37.98195°, Lon: -97.38975°).
In Sand Creek in the W ½ of the NW ¼ of Section 12, Township 24 South, Range 1 West, Harvey County, Kansas (37.98105°, Lon. -97.38852°).

Waterway: Mud Creek and Sand Creek

Activity type:	<input checked="" type="checkbox"/> Fill	<input type="checkbox"/> Excavation	<input type="checkbox"/> Structural
Site type:	<input checked="" type="checkbox"/> River/Stream	<input type="checkbox"/> Wetland	<input type="checkbox"/> Other WOTUS
Authority:	<input type="checkbox"/> Section 10	<input checked="" type="checkbox"/> Section 404	<input type="checkbox"/> Section 10/404

Activity purpose: Remove trees to increase farm acreage and allow high water storm flows to traverse the property without the impediment of trees and vegetative cover that existed along the streams in the floodzone.

Activity Status: ☐ Proposed ☐ Complete ☒ Ongoing 95%complete

Dates of inspection: July 26, 2021 and September 27, 2021

Dates of activity: Aerial imagery provided by Harvey County staff shows the majority of the activity within Mud Creek appears to have occurred prior to February 2021 with some clearing activities occurring as far back as 2014/2015. Activities along and within Sand Creek appear to have primarily occurred in 2021 with some additional fill activities even occurring after Mr. Jost was notified by the State of Kansas (Kansas Dept. of Ag. – Division of Water Resources) that the activities he conducted in Mud Creek were unlawful and that he must remove the fill from the stream. The additional fill (trees and soil) activities in Sand Creek also occurred after Corps staff

met on-site with Mr. Jost (July 26, 2021) where Corps regulations and possible enforcement actions were also discussed.

Impacts:

- Acreage: Approximately 0.95 acres within Mud Creek and approximately 0.52 acres within Sand Creek
- Length of channel: Approximately 4155' of Mud Creek and approximately 1800' of Sand Creek

Technical Aspects

(If more than one site, separate site information)

Fill volume/type of material/dimensions:

Mud Creek exhibited an average width (at the OHWM) of approximately 15 feet. Within the 4,155 feet of stream channel where fill activities occurred, fill was present in roughly 2/3 of the overall area (e.g. – a mosaic of trees and soil pushed into the channel). The average depth is difficult to estimate due to the varying density of vegetative material and associated soil as well as the fact that in large portions of the channel the vegetation was subsequently burned, removed, or transported downstream by storm flows prior to the site visit (though much of the vegetative fill is visible in the February 2021 aerials provided by Harvey County staff). In addition to the trees and associated soil, Mr. Jost also acknowledged that he had constructed several farm road crossings within Mud Creek (see photo logs). The crossings were not properly culverted or spanned and did not meet farm road exemption BMPs. A rough estimate would be that it averaged approximately 1 foot in depth within the 0.95 acres of total jurisdictional area estimated to have been disturbed by fill activities. Thus, approximately 1540 cubic yards of fill is estimated to have been discharged below the OHWM of Mud Creek.

Sand Creek exhibited an average width (at the OHWM) of approximately 25 feet. Within the 1800 feet of stream channel where fill activities occurred, fill was present in roughly 1/2 of the overall area (e.g. – a mosaic of trees and soil pushed into the channel). The average depth is difficult to estimate due to the varying density of vegetative material and associated soil. A rough estimate would be that it averaged approximately 4 inches in depth within the 0.52 acres of total jurisdictional area estimated to have been disturbed by fill activities. Thus, approximately 278 cubic yards of fill is estimated to have been discharged below the OHWM of Sand Creek.

Equipment used: Large wheeled front end loader (visible in photos 5, 6, 11, and 101 of September 27, 2021 Photo Log).

Tulloch II Considerations

1. Describe the extent of fill activities (i.e. material originating from outside waters of the U.S. that was placed into waters of the U.S.): All material within WoUS appears to have either been dumped or pushed into the jurisdictional areas, utilizing the large wheeled front end loader.

2. Describe the extent of dredged material discharge (i.e. material originating from the waters of the U.S. that was returned to waters of the U.S. - this includes stockpiles, windrows and other equipment spillage): In many areas of the stream channel it was difficult to determine where the primary stream channel originally existed since tree stumps and limbs likely damaged the channel/banks as they were pushed in and many areas appear to have filled due to associated soil and subsequent fill resulting from vegetative remnants (such as coals, ash, embers, charred wood, etc.). Thus it is difficult to ascertain the extent of fill resulting from the discharge of material originating from below the OHWM.

3. For any discharge of dredged material described in No. 2 above, discuss a) the distance between the excavation point and discharge point; b) the time differential between when the material was dredged and when it was discharged, and how long the discharge remained in place; and c) if the work occurred in dry or flowing conditions, and if subsequent flows moved any of the material: Any material displacement that occurred below the OHWM was likely a result of pushing trees into the stream channels as trunks and limbs combed and gouged the banks and bed while being pushed into the channel. Mr. Jost does not have a grapple on his high loader so it appears the vast majority of vegetative material was pushed into the channel rather than dumped, likely resulting in a good deal of upland, bank, and bed disturbance during the activity. Since the streams flow for a good portion of a typical year and the activities were ongoing over a broad range of time, it is highly likely the activities, at least in part, occurred during flowing conditions. Mr. Jost acknowledged that flow events often moved material he had discharged (he stated that he often had to rebuild the road crossings he constructed since they washed out with every heavy rain due largely to the fact that they were not culverted or spanned).

Narrative

Initial complaint reported by adjacent landowner (Mr. Tom Cowan) on July 23, 2021. Contacted KDA-DWR (Janelle Phillips) and KDHE (Scott Satterthwaite). Kansas Dept. of Agriculture – Division of Water Resources (KDA-DWR) had been previously notified. KDA-DWR supplied their notification letters of unlawful activities (see attached) and stated that Mr. Jost had agreed to remove the materials from the stream channels.

Also contacted the Harvey County NRCS/FSA office and spoke with the County FSA Director. She stated that they are currently discussing the unauthorized activities with Mr. Jost and explained that no determinations were made by NRCS/FSA on the respective areas where clearing occurred prior to the activities taking place.

Met onsite with Mr. Jost on July 26, 2021. Mr. Jost provided an onsite overview of everything he had done. He stated he was clearing the trees to gain additional crop ground and also allow overbank flows to traverse his properties more easily. He also stated he was working with KDA-DWR to gain compliance with their unauthorized activity notices by pulling all of the trees out of the stream channels using a high tensile strength cable/rope attached to the bucket of his wheeled high loader. Mr. Jost stated, however, that his loader experienced a hydraulic line rupture and he was waiting for it to be repaired before resuming the removal of trees from the channel. He also stated that he would be piling the trees in the uplands and would be burning them or cutting them

for firewood upon removal from the stream channels. Went over 404 program and explained that unauthorized activities could result in fines or other measures. He acknowledged that he was actively working with KDA-DWR to remove the materials and would not be pushing anything else into the stream channels.

After site visit with Mr. Jost, met with Mr. Tom Cowan (person making violation allegation) as well as his father, Bruce Cowan. Mr. Tom Cowan stated that he was primarily concerned that the activities would result in increased out of bank overland flood flows across their property - presumably in the areas of bermed material that are currently present in the uplands south of Sand Creek (see photo logs).

Followed up with Mr. Jost on September 24, 2021 to inquire if the unauthorized activity notices from KDA-DWR had been resolved and if he had completed removing all the material per their agreement. He stated he had not received any approval letters from them but that he had removed all the trees and fill material (as well as, the numerous unculverted road crossings). He agreed to allow me to visit the site on September 27, 2021 to document that all the materials had been removed. Contacted KDA-DWR and KDHE and invited them to attend the meeting as well but did not receive a response regarding availability.

Met with Mr. Jost on September 27, 2021. Upon arriving on site it was immediately observed that Mr. Jost was actively working in the stream channel and immediately adjacent areas. He was not using a cable or rope to lift/pull out tree materials that he previously discharged but was only using the bucket of the loader to try to drag material out of the channel. It was readily observed that much of the material had not yet been removed. Documented entire lengths of stream channels where activities (within the last year) had taken place along segments of Mud Creek. The elevated and unculverted road crossings had largely been removed but the streambed elevation was still elevated at these locations as concrete rubble and soil still remained.

Examples of discharged materials as well as documentation of Mr. Jost dragging material out of the stream channel:



Page 5 of 09-27-2021 Photo Log



Page 6 of 09-27-2021 Photo Log

The segment of Mud Creek where activities occurred from 2014-2018 was not traversed or evaluated on the ground. Aerials were reviewed for that portion but remaining fill (apart from an occasional tree within the channel) was not readily observable. Therefore, that segment is not included in stream length or fill calculations but is illustrated on the attached aerials for the record.

Along Sand Creek and also along Mud Creek near its confluence with Sand Creek, observed several piles of trees being actively burned both in the uplands and in very close proximity within the stream channel itself. Many additional trees had been pushed into the stream channel of Sand Creek, many of which still had green leaves though the roots had been severed.

Spoke with Ms. Gina Bell (Harvey County Planning/Zoning) on October 28, 2021. Ms. Bell provided a synopsis of her in-person meeting with Mr. Jost that occurred on October 21, 2021. Mr. Jost had been directed by Harvey County staff to remove the dead trees, and only the dead trees, from the stream channel. Ms. Bell stated that Mr. Jost did appear to comprehend the severity of the situation but did “not appear sincere by any stretch of the imagination” regarding the ongoing activities he has been conducting. Ms. Bell stated that she informed Mr. Jost that the county has Lidar imagery that tells them the exact depth of the streambed so they are aware of what he has done. Ms. Bell acknowledged that based on Mr. Jost’s track record, any promises on his part to restore stream elevations/profiles would likely not be dependable.

It is worth noting that Harvey County personnel, FSA staff, and both Tom and Bruce Cowan all stated that Mr. Jost has continued to conduct activities contrary to what local, state, and federal guidance allows. The opinions of many of the aforementioned are that Mr. Jost does not care if an activity is not allowed, and only does what he wants to do. Mr. Jost made no such statement to the Corps, however, that is the opinion of many who have past/present involvement with him on such matters.

On October 29, 2021, received an email from Kenneth Wasserman (attorney representing an adjacent landowner - Bruce Cowan). Mr. Cowan has asserted that the activities conducted by Mr. Jost are causing out of bank flows to be diverted more readily across his property (presumably primarily due to the berms located approximately 10’ in elevation above the OHWM and approximately 40’ landward of the OHWM of the south bank of Sand Creek). Mr. Wasserman’s correspondence stated that they would like to be advised as to the action taken. The letter also stated that in their discussion with Harvey County staff it was their understanding the Corps would be submitting a report to EPA. On November 3, 2021, received a phone call from Mr. Wasserman asking about EPA involvement and what could be discussed regarding Mr. Jost’s activities. Informed him about the general process of information gathering and documentation that must occur whenever we receive a violation allegation and stated that he would need to go through the FOIA process for project specific information. Also directed him to the NWK District website for the info/links to initiate that process. Mr. Wasserman stated that at this time they were more interested in the general process and that we are evaluating the activities.

To be clear, in discussing this matter with other regulatory agencies (Kansas Dept. of Ag. – Div. of Water Resources and the Harvey County Floodplain staff) I had inquired as to the status of the

matter being resolved with Mr. Jost. Ultimately when they could not bring about resolution, they inquired what the Corps could do. At this point I informed them I would develop a report of my findings and one possible outcome would be coordination with EPA for resolution but that we could also explore other means as well, including voluntary restoration. State and local agency staff asserted that a third party would likely be the best means to accomplish restorative efforts as Mr. Jost has not, thus far, demonstrated an aptitude to comply with agency directives/terms/agreements.

Jurisdiction

To the point of confluence with Sand Creek, Mud Creek has a drainage area of approximately 6100 acres (roughly 9.5 square miles). A small amount of stream flow was observed during both site visits. Numerous schools of small fish as well as frogs, turtles, and other aquatic life were also observed throughout Mud Creek, even among and between areas where flows were inhibited by the discharge of fill materials. Mud Creek appears to exhibit a seasonal relatively permanent flow regime (seasonal RPW).

At the point where Sand Creek exits Mr. Jost's property (roughly Page #57 in the July 26, 2021 photo log), Sand Creek has a drainage area of approximately 56,000 acres (roughly 87.5 square miles). At the point of confluence with Mud Creek, Sand Creek has a drainage area of approximately 48,000 acres (roughly 75 square miles). Sand Creek is a perennial stream.

Sand Creek and Mud Creek are both jurisdictional streams under the current pre-2015 guidance. Additionally, both streams would have also been aquatic resources regulated by the Corps of Engineers under the Navigable Waters Protection Rule when the bulk of the activities likely occurred.

Project Manager: Lucius Duerksen

Signature:



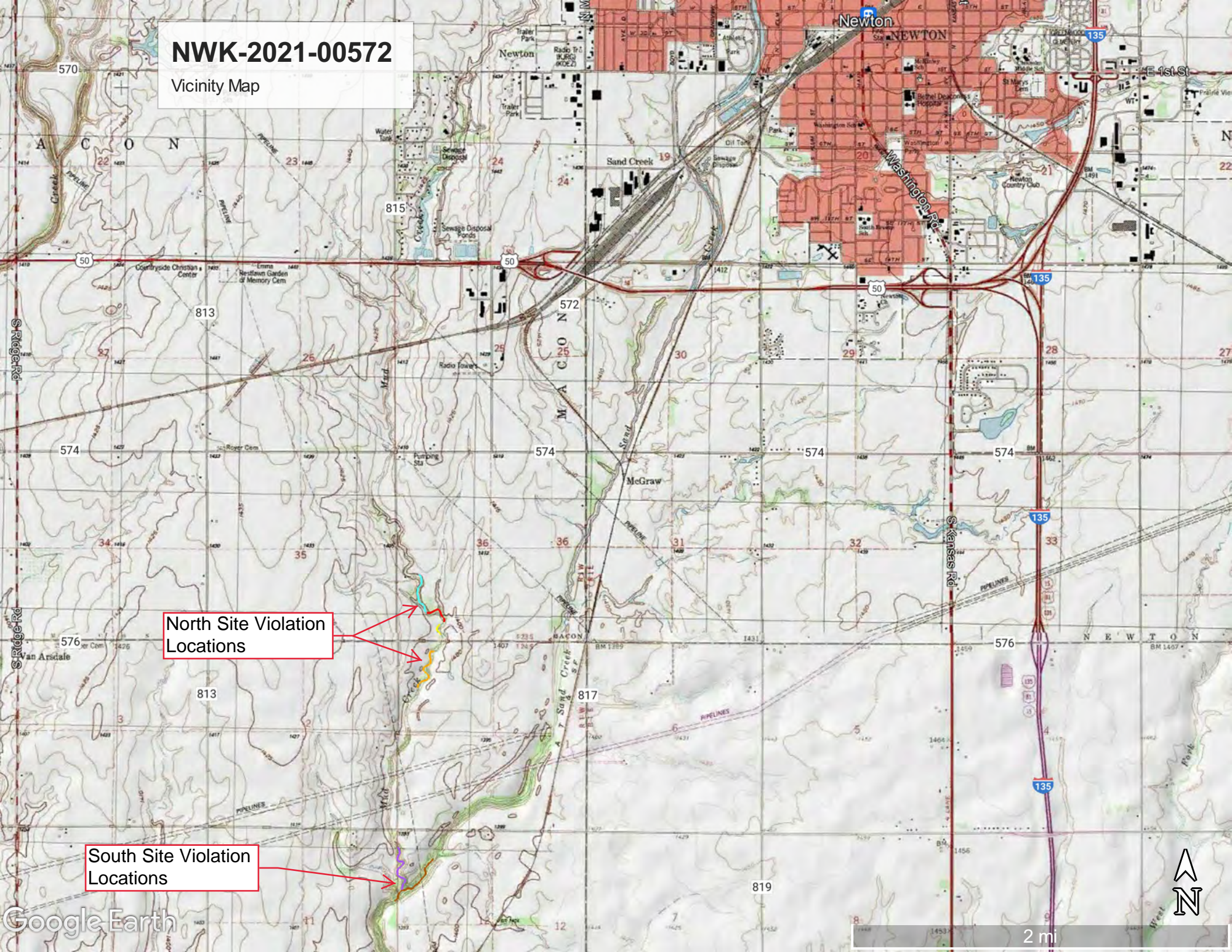
Date: 3 November 2021

Enclosures:

Violation Overview Maps/Imagery, July 23, 2021 email from KDA (w/attachments), October 29, 2021 Email from attorney Kenneth Wasserman, July 26, 2021 Photo Log, September 27, 2021 Photo Log, and Google Earth KMZ with Photo Points.

NWK-2021-00572

Vicinity Map

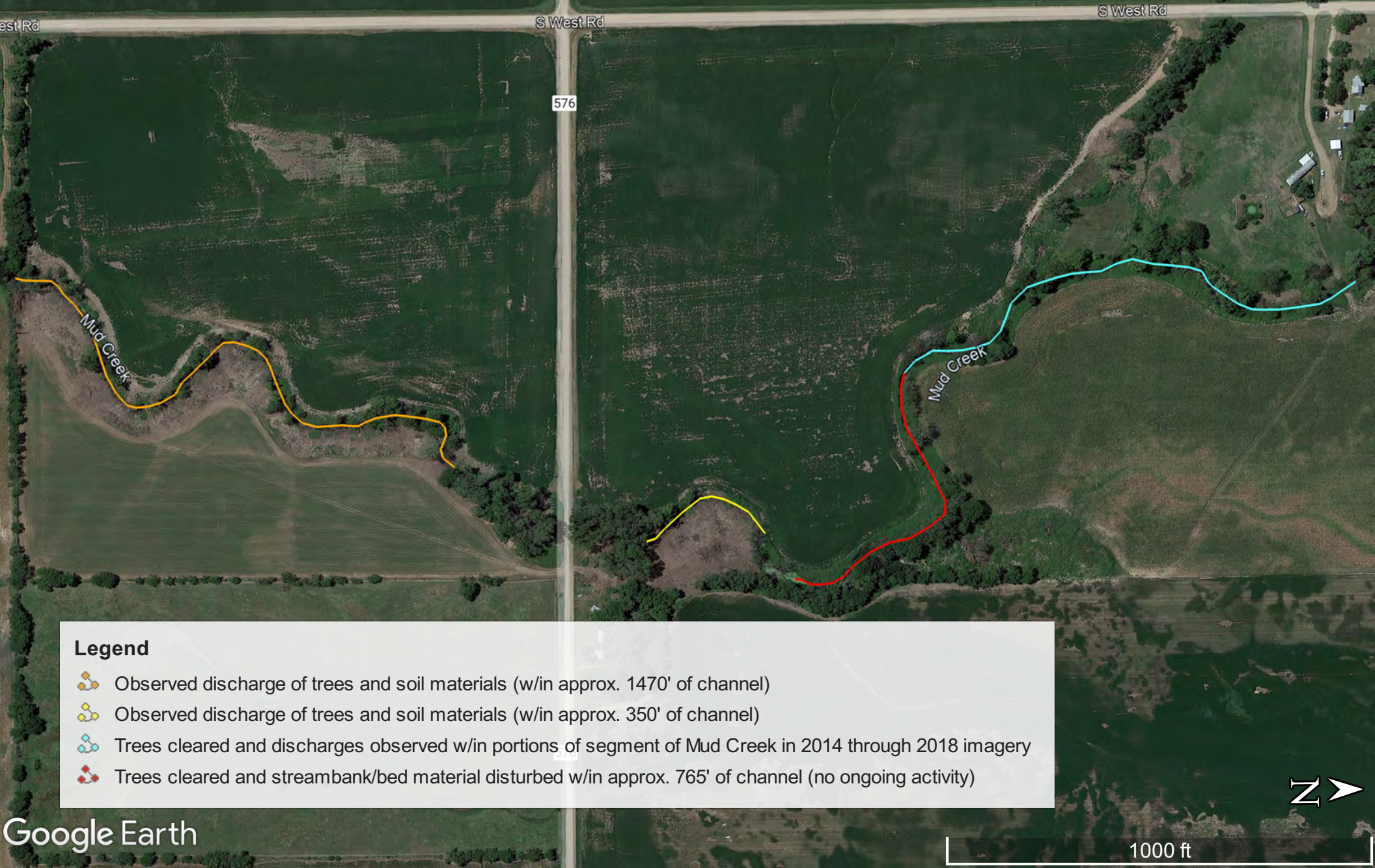


North Site Violation
Locations

South Site Violation
Locations

NWK-2021-00572

North Site (Jost, Stan)



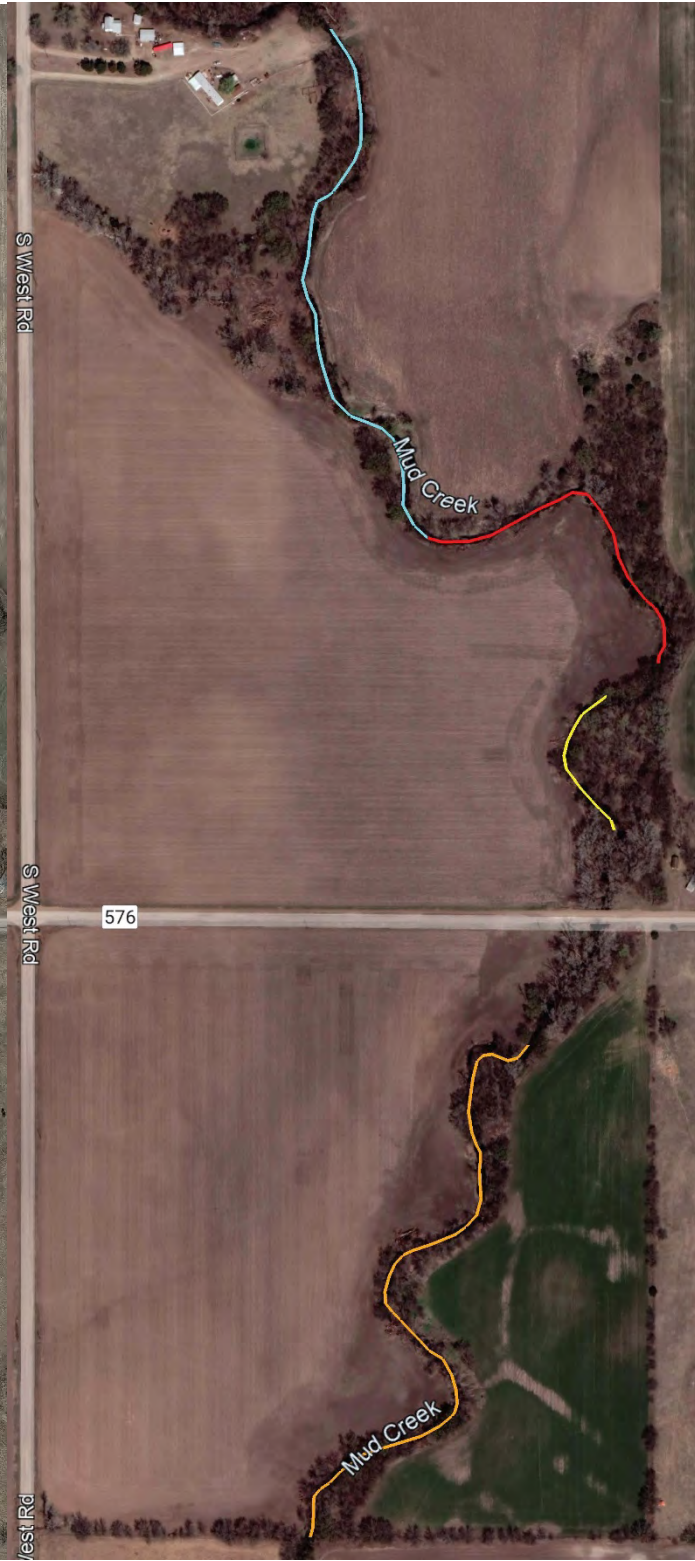
Legend

- Observed discharge of trees and soil materials (w/in approx. 1470' of channel)
- Observed discharge of trees and soil materials (w/in approx. 350' of channel)
- Trees cleared and discharges observed w/in portions of segment of Mud Creek in 2014 through 2018 imagery
- Trees cleared and streambank/bed material disturbed w/in approx. 765' of channel (no ongoing activity)

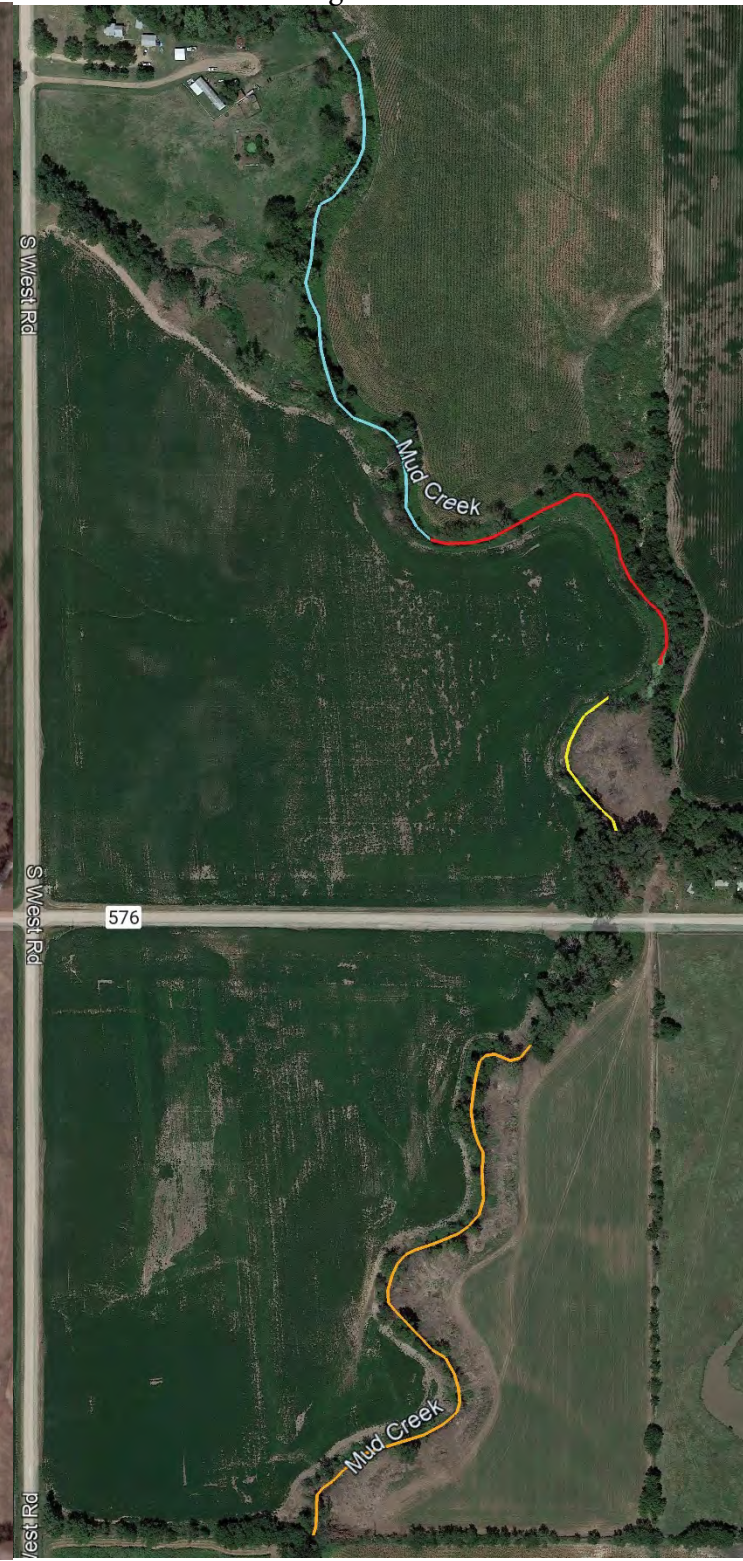
March 2014



April 2018



August 2021



NWK-2021-00572

South Site (Jost, Stan)

Sand Creek

Legend



Observed discharge of trees and soil (w/in approx. 1570' of Mud Creek)



Observed discharge of trees and soil material (w/in approx. 1800' of Sand Creek)

October 2017



October 2018



August 2021



Duerksen, Lucius J CIV USARMY CENWK (USA)

From: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Sent: Friday, July 23, 2021 3:39 PM
To: Duerksen, Lucius J CIV USARMY CENWK (USA); Scott Satterthwaite [KDHE]
Cc: Medley, Terry [KDA]
Subject: [Non-DoD Source] RE: Alleged violation Cowan/Jost
Attachments: 2021-06-23 SHV-0193 unlawful ltr.pdf; 2021-06-28 SHV-0193 mud creek photos from complainant.pdf; 2021-06-23 SHV-0194 unlawful ltr.pdf

Lucius and Scott -

Mr. Cowan did contact our office. DWR has made contact with Stan Jost on 6/28/2021. Mr. Jost's number is 316-772-6806. I explained our regulations and gave him until 7/28 to remove the trees from the stream. A copy of our violation letter is attached. Photos of the violation from Mr. Cowan are attached. Please let me know when you are planning on a site visit and I would be happy to try and be there. Please let me know if you require more information.

Janelle Phillips, P.E. *, CFM
Stream Obstruction Team Lead
Water Structures Program
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
Office: 785-564-6656
Cell: 785-307-8292
Janelle.phillips@ks.gov
*licensed in KS, MO, CO

From: Duerksen, Lucius J CIV USARMY CENWK (USA) <Lucius.J.Duerksen@usace.army.mil>
Sent: Friday, July 23, 2021 3:27 PM
To: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>; Scott Satterthwaite [KDHE] <Scott.Satterthwaite@ks.gov>
Subject: [WARNING: UNSCANNABLE EXTRACTION FAILED][WARNING: UNSCANNABLE EXTRACTION FAILED]Alleged violation

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Janelle/Scott,

I had a couple of lengthy conversations with a person reporting an alleged violation in Harvey county, as well as the FSA director for Harvey County. Both stated that the alleged violator (Stan Jost) has done some fairly extensive clearing along Mud Creek and Sand Creek (south of Newton) – see attached kmz that shows the approximate areas. I don't have any recent aerals but the clearing appears to date back to around 2014/2015 but just recently it has also included pushing trees into the creek channels.

Janelle – I believe the person making the violation allegation (Tom Cowan) has also contacted your office. Do you know if anyone has been on site to take a look at these activities? If not maybe we could set up a joint visit. From what Mr.

Cowan and the FSA staff have said, it sounds like it likely involves a 404 violation - discharge of fill material (trees and soil) within waters of the U.S.

I'll try to get ahold of Mr. Jost to set something up but let me know if you all would like to try to be included in a visit as well (or if either of you have already had staff take a look at it).

Also, FSA staff did state that apparently Mr. Jost did have a wetlands determination completed some time ago and the areas came back as non-hydric. However, a highly erodible land determination was not made at that time so they are currently waiting on staff to complete that, but more than likely he will not be in violation of NRCS or FSA regs from the sounds of it.

Thanks,

Lucius Duerksen
Regulatory Project Manager
U.S. Army Corps of Engineers
2710 NE Shady Creek Access Road
El Dorado, KS 67042-8644
Office - (816)389-3180 Cell - (316)323-0139 Fax - (316)322-8259
<http://www.nwk.usace.army.mil/Missions/RegulatoryBranch.aspx>
~~~~~

1320 Research Park Drive  
Manhattan, KS 66502  
785-564-6700  
www.agriculture.ks.gov



900 SW Jackson, Room 456  
Topeka, KS 66612  
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

June 23, 2021

Stan Jost  
3821 SW 48<sup>th</sup> Street  
Newton, KS 67114

Re: Work near stream and in floodplain  
WSN SHV-0193

Dear Mr. Jost:

The Division of Water Resources (DWR) received notice from Harvey County that trees and material has been pushed into Mud Creek in the W 1/2 of the NW quarter of Section 12, Township 24 South, Range 1 West of Harvey County, Kansas. This location is within the jurisdiction of Kansas Statute 82a-301 and 24-126. A permit is required to place material in the stream or in the floodplain. Aerial maps have been attached showing the work in question.

Please contact me to discuss the specific details of this location. Please contact me or respond in writing within 14 days of the date of this letter. I may be reached at (785) 564-6656.

Sincerely,

Janelle Phillips, P.E.  
Water Structures Engineer

pc: Harvey County FPA  
Scott Dodson – USCOE El Dorado Office





2021 aerial of property





Zoom in of 2021 aerial of work near stream

## Phillips, Janelle [KDA]

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**From:** Thomas Cowan <trc4020@yahoo.com>  
**Sent:** Monday, June 28, 2021 10:33 AM  
**To:** Phillips, Janelle [KDA]  
**Subject:** Mud creek. Harvey County Kansas.

**EXTERNAL:** This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.





Mud Creek Harvey County





Mud Creek Harvey County





Mud Creek Harvey County





Mud Creek Harvey County



1320 Research Park Drive  
Manhattan, KS 66502  
785-564-6700  
www. agriculture.ks.gov



900 SW Jackson, Room 456  
Topeka, KS 66612  
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

June 23, 2021

Phillip Jost Trust  
3618 N Hazelwood Street  
Wichita KS 67205

Re: Work near stream and in floodplain  
WSN SHV-0194

To Whom It May Concern:

The Division of Water Resources (DWR) received notice from Harvey County that trees and material has been pushed into Mud Creek in the NW quarter of the NW quarter of Section 1, Township 24 South, Range 1 West of Harvey County, Kansas. This location is within the jurisdiction of Kansas Statute 82a-301 and 24-126. A permit is required to place material in the stream or in the floodplain. An aerial maps have been attached showing the work in question.

Please contact me to discuss the specific details of this location. Please contact me or respond in writing within 14 days of the date of this letter. I may be reached at (785) 564-6656.

Sincerely,

Janelle Phillips, P.E.  
Water Structures Engineer

pc: Harvey County FPA  
Scott Dodson – USCOE El Dorado Office





2021 aerial of property



Zoom in of 2021 aerial of work near stream



**From:** [Kenneth W. Wasserman](#)  
**To:** [Duerksen, Lucius J CIV USARMY CENWK \(USA\)](#)  
**Subject:** [Non-DoD Source] Stan Jost  
**Date:** Friday, October 29, 2021 10:14:11 AM

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NORTON, WASSERMAN, JONES & KELLY L.L.C.  
ATTORNEYS AT LAW  
213 S. SANTA FE  
SALINA, KANSAS 67401-2388  
TELEPHONE (785) 827-3646  
FACSIMILE (785) 827-0538

Mr. Duerksen,

I represent Bruce Cowan, who is a landowner adjacent to Mr. Jost. The removal of the trees and other work performed on the creek bank is now causing water to come across my client's property. I talked with Gina at the County and understand you will be submitting a report to the EPA.

If possible, I would like to be advised as to the action being taken. Thanks in advance for your help.

Ken

Kenneth W. Wasserman  
Norton, Wasserman, Jones & Kelly, L.L.C.  
213 S. Santa Fe  
P.O. Box 2388  
Salina, KS 67402-2388  
Tel: (785) 827-3646  
Fax: (785) 827-0538

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